IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

ESTATE DUTY REFERENCE No 1 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CONTROLLER OF ESTATE DUTY

Versus

SUMATILAL POPATLAL

Appearance:

1. ESTATE DUTY REFERENCE No. 1 of 1987
MR BB NAIK with MR MANISH R BHATT for Petitioner No. 1
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 24/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue,

the following question has been referred for the opinion of this Court :-

"Whether, on the facts and in the circumstances of the case, Rs.1,21,833/- was rightly deleted from the principal value of the estate of the deceased ?"

2. This reference arises under the Estate Duty Act, 1953 in the case of Shri Sumatilal Popatlal, who died on 1.3.1982 (hereinafter referred to as "the deceased"). The deceased was the karta and the member of an HUF consisting of himself and his three sons. The HUF owned both moveable and immoveable properties. By a release deed dated 6.3.1981, the deceased had relinquished his share in the moveable properties of the HUF. As the deceased had relinquished his share in the moveable properties of the HUF within two years of his death, the ACED was of the view that the provisions of section 9 of the Act, were attracted. He, therefore, included Rs.1,21,833/- being the value of the deceased's share in the moveable properties of the HUF, in the principal value of the estate, determined by him at Rs.8,04,017/-. In appeal, the Controller of Estate Duty (Appeals) accepted the view of the accountable person by relying on the decision of this Court in Babubhai T. Panchal, 133 ITR 455. The revenue, therefore, carried the matter in appeal before the Tribunal. Relying on the same decision of this Court in Babubhai T. Panchal (Supra), the Tribunal upheld the order of the Controller of Estate Duty (Appeals). Hence, this reference at the instance of the revenue.

3. We have heard Mr BB Naik, learned counsel for the revenue. Though served, none appears of the respondent-accountable person.

4. The learned counsel for the revenue submits that the controversy raised herein is now concluded against the accountable person by the Full Bench decision of this Court in Late Manigauri T. Panchal (by Lrs. Babubhai T. Panchal) vs. CED, 196 ITR 517 wherein the Full Bench overruled the Division Bench judgment in Babubhai T. Panchal (Supra).

5. Having heard the learned counsel for the revenue and having perused the aforesaid Full Bench decision of this Court in Late Manigauri T. Panchal (Supra), we answer the question in the negative i.e. in favour of the revenue and against the accountable person.

The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-